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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/2007

SPONSOR Miera LAST UPDATED _____ HB 323

SHORT TITLE Charter School Revenue Bond Matches SB _____

ANALYST Aguilar

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(\$2,600.0)		Recurring	General Fund
	See Fiscal Implications			Charter School Bonding Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to HB-328 and Senate Bill 39

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)
 Attorney General's Office (AGO)
 New Mexico Finance Authority (NMFA)

Responses NOT Received From

Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

House Bill 323 authorizes revenue bonds to be used for providing the match required for grants to state-chartered charter schools provided under the Public School Capital Outlay Act; creates the charter school bonding fund; provides for the distribution of gross receipts tax revenue and distributions from revenue received through the public school capital improvements act into the fund and authorizes additional property tax levies to be approved by voters.

FISCAL IMPLICATIONS

HB-323 provides for a distribution from net gross receipts attributable to the gross receipts tax. The amount needed for debt service at full bonding capacity assuming a 5 percent interest rate for 10 years, would be approximately \$2.6 million which would decrease revenues received to the general fund. The decrease in revenue of \$2.6 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Note: major assumptions underlying fiscal impact should be documented.

HB-323 requires that funds received from the imposition of the SB-9 two-mill levy under the Public School Capital Improvements Act be distributed on a per membership basis. The funds attributable to state-chartered schools shall be paid directly to the charter school fund. Currently at two-mills, school districts generate approximately \$83.5 million. Assuming all the current charter schools were state chartered this would amount to approximately \$2.8 million which would be directed annually to the fund.

Provisions contained in the bill allow school districts to impose an extra mill assessment on property which is to be divided on a per membership basis including charter schools. This extra mill if implemented statewide could result in an additional \$42.4 million. Of this amount, approximately \$1.4 million could be raised locally for charter schools. The bill provides for this amount to be directed to the charter school bonding fund.

Further, the bill requires that the funds received as the state match to the two-mill levy be distributed on a per membership basis. The funds attributable to a state-chartered school shall be directly paid to the charter school fund. Assuming all the current charter schools were state chartered this would amount to approximately \$233.5 thousand annually to the fund.

SIGNIFICANT ISSUES

The bill authorizes the New Mexico Finance Authority to issue bonds in an amount outstanding not to exceed \$20 million payable solely from the charter school bonding fund.

HB-323 provides for a distribution of net receipts from revenue received from the gross receipts tax in an amount necessary to make required debt service payments on bonds sold to fund charter school match requirements.

The purpose of the bond sale is to provide the share of the cost of a capital outlay project for a state-chartered charter school that is not funded from the public school capital outlay fund.

HB-323 provides for state-chartered charter schools to apply for assistance under the public school capital outlay act provided that:

- The portion of the project cost for a state-chartered school is to be determined by using the same percentage as the school district where it is located. This must occur because

part of the calculation to determine the percentage of participation requires land valuation pursuant to the property tax code, which a state-chartered school would not have.

- All direct legislative appropriations made after January 1, 2007 to a state-chartered school shall be excluded from the offset of the school district but included for determining the offset of the charter school. The offset will be excluded whether the charter is a state charter at the time of the appropriation or becomes a state charter at a later date.
- The PSCOC may award grant assistance from the PSCOF contingent upon the issuance of charter bonds.

The bill requires school districts to include state chartered charter schools located within the district on the ballot question for capital improvement tax imposition and include a statement that a portion of the revenues will be used for capital improvements of state-chartered schools. Revenues from a tax approved by the qualified electors after July 1, 2007 that are attributable to the state-chartered schools shall be made by the county treasurer directly to the charter school bonding fund.

The bill also provides for school districts to request authorization from district voters for an additional 1 mill levy for capital improvement in the district for a term not to exceed six years. Revenue received from this levy will be apportioned among all schools in the district based on the schools prior year 40th day enrollment or on current 40th day enrollment if classes had not commenced in the prior year and the amount of tax revenue to be distributed to each state-chartered school shall be distributed by the county treasurer directly to the charter school bonding fund.. This provision includes both district and state chartered schools to be included on the ballot question as well take part in sharing revenue received. This appears to bring into question a local school boards' authority to make decisions for their districts. And including state chartered schools, which are not under the control of the local board, raises further concern.

The bill also provides for revenues received from the state as a match to the district's SB-9 levy is distributed to all schools within a district including state-chartered charter schools on a membership basis. All funds attributable to state-chartered schools shall be distributed by the secretary to the charter school bond fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 328 also provides funding mechanisms for charter schools which might conflict with those set forth in this bill.

TECHNICAL ISSUES

Is there a maximum duration of bonds? The bill does not specify the duration for which bonds will be issued. LFC suggests that bonds not be issued for more than 10 years.

Who will certify projects? Usually a board or council certifies projects to NMFA who then issues bonds. The mechanism by which NMFA determines the amount of a bond issue is unclear.

The Public Education Department submits the following for consideration for the Legislature:

Line 6 through 10 on page 20 states that all offsets incurred as a result of direct legislative appropriations to charter schools after January 1, 2007 will follow the charter schools as they become state-chartered schools. This poses a problem because a district with a local chartered school may apply for assistance under the PSCOA and use the offset before the charter school becomes a state-chartered school. In essence an offset may be counted twice.

Section 9 adds language to the PSCIA to require that the funds be distributed on a per membership basis. The funds attributable to a state charter school shall be directed into the charter school fund. What about locally chartered schools? Were they inadvertently left out of this section? Is there an amount to be attributable to them that either goes to the fund or to the charter?

Section 9 does not specify when the secretary shall calculate and notify the county treasurers each year. Is there a specific date that county treasurers need this information in order to make these distributions?

Section 10 adds a new section which allows a school district to impose an extra mill or ad valorem tax to be divided on a per membership basis. Does imposition of this extra mill have to take place at the same time as the imposition of the tax imposed pursuant to section 22-25-3 NMSA 1978 or can a school district impose this mill at any time? If the intent is to implement these two mill levies concurrently language needs to be added to state this. A recommendation would be to add this language after section 4 on page 23, line 24. Section 10 may have the same technical issues as in section 9 mentioned above.

Section 12 does not mention locally chartered school in distributing the state match under the PSCIA. Is this purposely intended?

PA/csd